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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/928,156

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BERSTED

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EXAMINER

AMOCO CORPORATION  
LAW DEPT MAIL CODE 1907A  
200 EAST RANDOLPH DRIVE  
PO BOX 87703  
CHICAGO IL 60680-0703

JUSKA, C

ART UNIT

PAPER NUMBER

1771

DATE MAILED:

04/23/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

## Office Action Summary

Application No.  
08/928,156

Applicant(s)

Bersted et al.

Examiner

Cheryl Juska

Art Unit

1771



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on Feb 9, 2001
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 92-121 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 92-121 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirements.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other: \_\_\_\_\_

Art Unit: 1771

## **DETAILED ACTION**

### ***Continued Prosecution Application***

1. The request filed on February 9, 2001, for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/928,156 is acceptable and a CPA has been established. An action on the CPA follows.

### ***Response to Amendment***

2. Preliminary Amendment C, submitted as Paper No. 14 on February 9, 2001, has been entered. Claims 1-59 and 80-91 have been cancelled and replaced with claims 92-121.

3. The cancellation of claims 1-59 and 80-91 renders moot the previous rejections set forth in the last Office Action. Applicant's arguments with respect to the double patenting rejection (Amendment C, page 5, line 13-page 6, line 20) have been found persuasive. Thus, the new claims are not rejected under double patenting. Additionally, new claims 92-121 have been drafted in view of the 112 rejections set forth in sections 6-9 of the last Office Action.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to

Art Unit: 1771

make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 92-121 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not provide enablement for the new limitation that bulk is in the form of "*at least one of* random entanglement, waviness, looping and whirling of filaments." Page 37, line 22-page 38, line 2, does not teach bulk due to *more than one* type of texturing. Thus, claims 92-121 are rejected as containing new matter.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 92-121 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 330 212 issued to Wishman.

New independent claims 92 and 105 include limitations from cancelled claims 31 and 41, respectively. Additionally, a denier limitation which was present in cancelled claim 33 is incorporated into claims 92 and 105. The new (previously unexamined) limitation found in claims

Art Unit: 1771

92 and 105 is that the continuous filaments have bulk "in the form of at least one of random entanglement, waviness, looping and whirling of filaments." The limitations of dependent claims 93-104 and 106-121 are not new limitations.

A rejection of the present invention by the cited Wishman patent is maintained despite the new limitation of bulk form. As noted by Applicant, Wishman teaches sawtooth crimps as the bulk form, which is outside of the scope of the new bulk form limitation. However, the claims are rejected as being obvious over Wishman in that it would have been obvious to one of ordinary skill in the art to employ an art recognized equivalent form of bulk. The Applicant is hereby given Official Notice of the equivalence of various bulk methods (i.e., crimping, air texturizing, false-twisting, knitting-deknitting, etc.). Thus, selection of any one of these known equivalents to produce filaments or yarns with enhanced physical properties, due to the increase in texture or bulk, would be within the level of ordinary skill in the art.

#### ***Response to Arguments***

8. In response to Applicant's arguments (Amendment C, page 6, line 26-page 7, line 27), it is noted that the present specification does not evidence any criticality for the newly claimed bulk forms. Actually, the specification teaches all bulk forms, including sawtooth crimps, are equally suited for the invention (page 37, lines 22-27). Thus, there is nothing on record to show that the present invention and its specifically claimed properties (i.e., shrinkage and Plug Crush Recovery) can only be obtained by entanglement, waviness, looping and whirling bulk forms. Hence, the

Art Unit: 1771

present claims are not patentably distinct from the prior art and the above rejection is maintained.

With respect to Applicant's assertion that the present invention is distinguished from Wishman because Wishman "does not disclose or suggest improved compressional recovery as indicated by Applicant's Plug Crush Recovery test" (Amendment C, page 7, line 28-page 8, line 11), it is noted that Applicant's and Wishman's testing methods are not identical (i.e., different pressures, different recovery times, etc). Thus, a direct comparison of values is impossible. However, it is reasserted that both tests measure resilient properties of the yarns which are inherent to said yarns.


With respect to Applicant's arguments about the claimed shrinkage values (Amendment C, page 8, lines 12-14), it is reasserted that the claimed shrinkage values are inherent to the Wishman yarn in that Wishman employs a like composition and structure of the claimed yarn. Therefore, Applicant's arguments have been found unpersuasive and the above rejection is maintained.

### *Conclusion*

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is (703) 305-4472. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached at (703) 308-2414. The official fax number for this TC 1700 is (703) 872-9310 and, for After Final communications, (703) 872-9311.

cj

April 19, 2001



CHERYL JUSKA  
PATENT EXAMINER